IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

Crl.MC.No. 1078 of 2007()

CC.270/2006 of JUDL.MAGISTRATE OF FIRST CLASS, PALA

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PETITIONER: ACCUSED

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1. SOBIN.K. BABU, S/O.AUGUSTINE,
   AGED 32 YEARS, RESIDING AT KARINGOZHAKAL
   VELLILAPPILLY, EZHACHERY KARA, MEENACHIL TALUK,
   KOTTAYAM.

2. BENNY K.JOSEPH, S/O.JOSEPH,
   AGED 45 YEARS, RESIDING AT KARINGOZHAKAL
   VELLILAPPILLY, EZHACHERY KARA, MEENACHIL TALUK,
   KOTTAYAM.

BY ADV. SRI.MANUEL KACHIRAMATTAM
SRI.P.PAULOCHAN ANTONY

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
   RAMAPURAM POLICE STATION, KOTTAYAM.

3. SEBASTIAN, S/O.CHERIAN,
   66 YEARS OF AGE, RESIDING AT KARINGOZHAKAL,
   VELLILAPPILLY, EZHACHERY KARA, MEENACHIL TALUK,
   KOTTAYAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1078 of 2007

Dated this the 3rd day of April, 2007

ORDER

The petitioners face allegations under Sections 323 and 324 I.P.C. Cognizance has been taken against them on the basis of a protest private complaint filed by them.

2. That an incident had taken place on 18.12.2003 is not seen disputed. About that incident, rival versions are advanced by the rival contestants. Police had charge sheeted the case registered at the instance of the petitioners, but had referred the case registered at the instance of the respondent herein. Thereafter protest private complaint was filed. Cognizance has been taken on the basis of such protest private complaint.

3. The learned counsel for the petitioners submits that the allegations raised against the petitioners are false and the allegations are only a counter blast against the allegations raised against the complainant/respondent herein in the case charge sheeted by the police. In as much as the allegations are incorrect and false and are raised only for the purpose of creating a defence in the case against the complainant, proceedings initiated against the petitioners may be quashed invoking the powers under Section 482 Cr.P.C.

4. Allegations and counter allegations are raised by the rival contestants. Without dispute, the complainant/respondent herein had

also suffered some injuries. The disputed question is whether he sustained such injuries of acid burn when he was attempting to cause injuries to the petitioners or whether injuries were caused to the respondent in the manner alleged by him.

5. Having considered all the relevant inputs, I am of the opinion that at this stage, exercising the powers under Section 482 Cr.P.C, that subtle question as to which the allegation is true or false cannot be decided by this Court. This is an eminently fit case where the learned Magistrate must proceed further with both the cases and take appropriate decision.

6. The learned counsel for the petitioners finally prays that the petitioners may be permitted to claim discharge before the learned Magistrate. The petitioners' right to claim discharge under Section 245(1) or 245 (2) Cr.P.C will certainly remain unfettered by dismissal of this Crl.M.C. I make it clear that I have chosen only to take the view that powers under Section 482 Cr.P.C do not deserve to be invoked to quash the proceedings initiated against the petitioners. Needless to say, the learned Magistrate must consider the claim for discharge at the appropriate stage under Section 245(1) or 245 (2) Cr.P.C.

7. This Crl.M.C is, in these circumstances, dismissed with the above observations.

(R.BASANT, JUDGE)

rtr/-